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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 171

THE UNITED STATES OF AMERICA, APPELLANT

v.

JOE BURNISON AND PHIL C. KATZ, PUBLIC ADMINISTRATOR OF THE CITY AND COUNTY OF SAN FRANCISCO

No. 188

THE UNITED STATES OF AMERICA, APPELLANT

v.

CHARLES F. GAYETTY, ANNIE L. HARRIS, GEORGE E. BREECE, ET AL.

ON APPEALS FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

In No. 171, the Superior Court of the State of California in and for the City and County of San Francisco wrote no opinion. The opinion of the District Court of Appeals, State of California,

First Appellate District (B. R. 48–52)[1] is reported at 87 Adv. Cal. App. (2d) 310.[2] The opinion of the Supreme Court of the State of California (B. R. 54–61) is reported at 33 Cal. (2d) 638.

In No. 188, the Superior Court of the State of California, in and for the County of Los Angeles wrote no opinion. The opinion of the Supreme Court of California (G. R. 32–33) is reported at 33 Cal. (2d) 647.

JURISDICTION

The judgments of the Supreme Court of California were entered on March 22, 1949 (B. R. 61; G. R. 33). The petitions for appeal were submitted to Chief Justice Vinson on June 15, 1949 (B. R. 62; G. R. 34–35) and were allowed on June 16, 1949 (B. R. 63–64; G. R. 36). No. 171 was docketed in this Court on July 6, 1949 and No. 188 was docketed on July 12, 1949. This Court noted probable jurisdiction on October 10, 1949 (B. R. 66; G. R. 38). Jurisdiction of this Court rests upon 28 U. S. C. 1257 (2).

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[1] There are two separate printed records in these cases. For convenience (B. R.) and (G. R.) will be used to refer to the *Burnison* and *Gayetty* records respectively.

[2] This opinion is not reported in the bound volume of 87 Cal. App. 2d, since, as we have been informed by the publisher of the California reports, under California law an opinion of a district court of appeal on which the California Supreme Court grants a hearing is regarded as superseded by the Supreme Court's subsequent opinion.

QUESTIONS PRESENTED

The Supreme Court of California has construed Section 27 of the Probate Code of California as barring the United States from receiving testamentary gifts under wills of California domiciliaries, while permitting the State of California and its governmental subdivisions to receive such gifts. The questions presented are:

1. Whether Section 27, as so construed, infringes upon the inherent sovereign power of the United States to receive testamentary gifts.

2. Whether Section 27, as so construed, effects an unconstitutional discrimination against the United States.

STATUTE INVOLVED

Section 27 of the Probate Code of California provides:

> *Who may take by will.* A testamentary disposition may be made to the state, to counties, to municipal corporations, to natural persons capable by law of taking the property, to unincorporated religious, benevolent or fraternal societies or associations or lodges or branches thereof, and to corporations formed for religious, scientific, literary, or solely educational or hospital or sanitorium purposes, or primarily for the public preservation of forests and natural scenery, or to maintain public libraries, museums or art galleries, or for similar public purposes. No other cor-

poration can take under a will, unless expressly authorized by statute.

STATEMENT

No. 171 (Burnison)

Upon his death on February 23, 1946, Gust Burnison, also called Gustav Burnison, a resident of San Francisco, California, left a holographic will, in which he stated:

> This is my last Will & Wish
> That I give all I own & possess to The United States government U. S. A.
> The benefreiory shall be executor
> My body shall be cremated after death

(B. R. 1, 2). The Superior Court of the State of California in and for the City and County of San Francisco admitted this document as the last will and testament of the decedent on the petition of Phil C. Katz, Public Administrator of the City and County of San Francisco and appointed him as administrator with the will annexed (B. R. 3–4). The property left by the decedent, all personalty, was appraised at $22,668.70 (B. R. 6–10).

The heirs-at-law, three brothers, one sister and thirteen nieces and nephews, petitioned for distribution of the whole estate to themselves on the ground that "the United States of America is not authorized to take by will under the provisions of Section 27, Probate Code of the State of

California or under any other statute or law of the State of California" and hence that the bequest to the United States was void (B. R. 10–11, 13). The Superior Court sustained the objection which the United States had interposed (B. R. 17–18) and dismissed the petition (B. R. 18).

The appeal of the heirs to the Supreme Court of California was referred for hearing and decision to the District Court of Appeals, State of California, First Appellate District, as authorized by Article VI, Section 4c of the Constitution of the State of California. The District Court of Appeals reversed the order of the Superior Court (B. R. 52). That court construed Section 27 as not sanctioning bequests or devises to the United States *eo nomine* (B. R. 51). It further stated that the contention of the United States that the statute, if so construed, would be unconstitutional is answered by *United States* v. *Fox,* 94 U. S. 315 and *Irving Trust Co.* v. *Day,* 314 U. S. 556 (B. R. 50–51).

Upon the petition of the United States for a hearing (B. R. 25–47), the Supreme Court of California, sitting in bank, approved, one judge dissenting, the holding of the District Court of Appeals and reversed the order of the Superior Court (B. R 61). The court held that the State of California has the exclusive power to designate those who may take property by descent and hence that "section 27 * * * prescribing

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'who may take by will,' must be construed as determinative of the validity of the bequest here in question" (B. R. 55). The court went on to interpret Section 27 as excluding the United States and all other states except California from among the eligible beneficiaries (B. R. 56–57).

No. 188 (Gayetty)

Upon her death on February 4, 1945, Emily P. Sanborn, a resident of the County of Los Angeles, left a will dated June 12, 1942 (G. R. 1, 2, 16–17). Item III of the will provided: "I hereby give, devise and bequeath unto the UNITED STATES OF AMERICA, all of my bonds issued by the United States Government, which stand in my name and which I may hereafter acquire in my name, and all of the real properties and interests in real properties which I now own and of which I shall or may die seized or possessed" (G. R. 16–17).

Annie L. Harris, an heir-at-law, petitioned the Superior Court of the State of California in and for the County of Los Angeles to admit this will for probate, alleging it to be the last will of the deceased (G. R. 25–27). In her petition, she stated that Willis Sargent, named in the will as executor, had declined to act and prayed that Letters of Administration with-the-will-annexed be issued to her (G. R. 25, 27). She further declared "her hostility to Item III of said Will"

and that "at the appropriate time and by appropriate proceedings, she will object to distribution of said estate under the terms of said Item III on the ground that a testamentary disposition may not be made to the UNITED STATES OF AMERICA under the provisions of Section 27 of the Probate Code of the State of California" (G. R. 27). After a contest, this will was admitted for probate and Letters of Administration with-the-will-annexed were issued to Annie L. Harris (G. R. 17–18, 19–20).

The administratrix thereafter filed a petition for final distribution, alleging that although the United States claimed to be entitled to have distributed to it all of decedent's United States Government Bonds and all of her real property, the United States was not eligible to take these gifts under Section 27 of the Probate Code and that the heirs-at-law were entitled to distribution of the whole estate (G. R. 1, 5–6). The Superior Court, noting that the United States objected to the heirs' petition, entered a decree of distribution to the United States in accordance with the provisions of Item III of the will (G. R. 13, 14–15).

The heirs appealed to the Supreme Court of California (G. R. 21–22). In an opinion rendered the same day as that in the *Burnison* case (No. 171), the Supreme Court of California, one judge dissenting, reversed on the authority of

that case (G. R. 32–33). The court rejected the contention of the United States that two statutes (Act of April 3, 1945, 59 Stat. 48, c. 51, § 4; 31 U. S. C. 757e; Act of March 3, 1903 (32 Stat. 1112, c. 1007, § 1; 40 U. S. C. 304)) established its authority to take the bonds and real estate left by it by the decedent, with the comment (G. R. 33):

> * * * such Congressional enactments, by their provision for the Government's disposition of such testamentary gifts, can be regarded as no more than implied recognition of the power of the United States to take property by will, but only where such act would be in accordance with the law of the state governing the right to make the testamentary disposition in question. Certainly such federal statutes cannot validate a "devise" or "bequest" of property in this state made by a California resident contrary to our statutory law (Estate of Burnison, *supra*.) * * *

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of California erred:

1. In holding that Section 27 of the Probate Code of California, barring the United States from receiving testamentary gifts under wills of California domiciliaries, does not effect an unconstitutional discrimination against the United States.

2. In holding that Section 27 does not infringe the inherent sovereign power of the United States derived from the Constitution.

3. In holding that a state's power to control the descent of property is not subject to any constitutional limitations.

SUMMARY OF ARGUMENT

I

These decisions of the California Supreme Court are bottomed on the fallacious premise that the power of the state over the devolution of property is absolute and exclusive, unfettered by the federal Constitution. But the control of a state over the descent of property located within its boundaries is, like every other aspect of a state's power, subject to the limitations and protections afforded by the federal Constitution. It is "under our Constitution [that] the devolution of property is determined by the laws of the several States." *Snyder* v. *Bettman,* 190 U. S. 249, 252. Thus, a treaty permitting foreign nationals to take testamentary gifts overrides, under the supremacy clause of the Constitution, the inconsistent provisions of state law. *Clark* v. *Allen,* 331 U. S. 503. Similarly, for example, it cannot be doubted that a restriction imposed by state law on the right to bestow or receive testamentary gifts, based on race or color, would violate the Fourteenth Amendment. Cf. Section 1 of the Civil Rights Act of 1866 (R. S. 1978, 8 U. S. C. 42); *Shelley* v. *Kraemer,* 334 U. S. 1, 10. And a state tax on the descent of property—

traditionally regarded as being based in part, at least, on the state's control over descent—may be so arbitrary or unreasonable as to be invalid under the equal protection clause. It is, therefore, plain that California's regulation of the descent of property is valid only insofar as it does not infringe upon the rights of the United States under the Constitution.

II

A. The United States' right to receive testamentary gifts, like the power to enter contracts, to sue in its own name, to take security for debts owing it and to requisition property, is one of the inherent attributes of the general sovereignty created by the Constitution. The United States has long received such gifts from decedents domiciled in virtually all states, and the Treasury Department's power to accept these gifts has never been questioned. Although a general statute authorizing the acceptance of these gifts has never been thought needful, various statutes enacted by Congress in regard to particular types of testamentary gifts uniformly assume the propriety of acceptance and either deal with their disposition or vest authority in a specified agent, other than the Secretary of the Treasury, to receive the gift for particular governmental purposes.

B. The supremacy clause of the Constitution subordinates the state's control over property

devolution to the United States' right to receive testamentary gifts. Since every authorized activity of the United States is an exercise of its governmental powers, it follows that the right of the United States to perform those functions which are exercises of its inherent sovereign powers is coextensive with the federal power. Accordingly, since the supremacy clause protects from nullifying state action other inherent sovereign powers of the United States, as well as other ways of securing adequate public revenues even where the fund involved is in a decedent's estate, it would be anomalous if the United States' inherent right to receive testamentary gifts, a traditional and important source of public revenue, were not protected by the supremacy clause and instead were dependent upon the grace of subordinate states.

United States v. *Fox*, 94 U. S. 315, upon which the court below placed its principal reliance, is demonstrably erroneous, and should be overruled. The Court's subsequent recognition of constitutional limitations on the state's power over the devolution of property undercuts the broad ground of that case. Moreover, the decision, while relying on the rule of English law that the sovereign has control over the devolution of property, disregarded the corollary English principle that bequests for the benefit of the country are valid, and hence made no attempt to reconcile

these principles in the light of our dual system of state and federal sovereignties with the federal Government supreme. *United States* v. *Perkins,* 163 U. S. 625, also relied upon below, is distinguishable as resting upon the power of the states to tax the transfer of property, a power which exists independently of the state's general control over the descent of property.

III

Section 27, denying to the United States a right to receive testamentary gifts which it accords to the State of California and its subordinate governmental units, works a discrimination against the United States which is prohibited by Article VI of the Constitution. It is clear, for example, that state legislation regulating the priority of claims against decedents' estates may not discriminate against claims arising under federal law. See *Pufahl* v. *Estate of Parks,* 299 U. S. 217, 227, 232. What is true of a right conferred upon a private person by federal statute is *a fortiori* true of a right which, under the Constitution, inheres in the United States as a sovereign.

ARGUMENT

The Supreme Court of California has construed Section 27 of its Probate Code to exclude the United States from the classes eligible to receive gifts under the wills of California domiciliaries

as effectively as if the statute, *in haec verba,* prohibited the United States from taking as a distributee. It rejected the Government's contentions that, as so construed, Section 27, in violation of the supremacy clause of Article VI of the Constitution, deprives the United States of the right, incident to its sovereignty, to receive testamentary gifts, and discriminates against the United States. The court below based these holdings solely on the ground that the power of the State of California over the devolution of property is absolute and exclusive, free from any constitutional limitations.

The decision below as to the proper construction of Section 27 is, of course, final here, and the United States does not now raise any question in regard thereto. The United States does, however, claim that Section 27, as so construed, is unconstitutional as applied to it. In Point I, we demonstrate that the broad ground of the decision below is erroneous and that a state's power over the disposition of property is subject to constitutional limitations, including the supremacy clause. We go on to show in Point II that Section 27 denies to the United States its sovereign right to receive testamentary gifts, contrary to the prohibitions of Article VI. In Point III, we show that the refusal of California to permit the United States to take testamentary gifts while sanctioning such gifts to itself and

its local governmental units discriminates against the United States, in violation of the supremacy clause.

I

THE POWER OF THE STATE OF CALIFORNIA OVER DISPOSITION OF PROPERTY LOCATED WITHIN ITS BOUNDARIES IS SUBJECT TO THE LIMITATIONS OF THE FEDERAL CONSTITUTION

The Supreme Court of California's rejection of the Government's claim that Section 27 of the Probate Code is unconstitutional as applied to it is based on the theory that the State of California had absolute and exclusive power over the devolution of property located within its boundaries, unrestrained by any provision of the federal Constitution. "The [state] legislature may withhold the right [of testamentary disposition] altogether, or impose any conditions or limitations upon it which it chooses" (B. R. 54). This proposition was predicated on broad generalities in the decisions of this Court (*United States* v. *Fox*, 94 U. S. 315; *United States* v. *Perkins*, 163 U. S. 625; *Irving Trust Co.* v. *Day*, 314 U. S. 556) to the effect that "Nothing in the Federal Constitution forbids the legislature of a state to limit, condition, or even abolish the power of testamentary disposition over property within its jurisdiction" (314 U. S. at 562) (B. R. 59). "In short," the court below commented, "the entire matter of the right of testamentary disposition

appears to be one within the control of the state having jurisdiction of the property in question, and there is no constitutional requirement that the state allow the United States to take 'under a will' " (B. R. 59).

This proposition, so fundamental to the reasoning of the court below, is demonstrably unsound. This Court has had recent occasion to emphasize that the matter of the right of testamentary disposition is not entirely within the control of the state, but is subordinate to the federal Constitution. In *Clark* v. *Allen,* 331 U. S. 503, a California statute, as construed by the California courts, would have prohibited a devise of realty to a German alien; but a treaty between the United States and Germany guaranteed the right of the alien to take the property. This Court held that since "the provisions of the treaty have not been superseded or abrogated, they prevail over any requirements of California law which conflict with them" (331 U. S. at 508) and went on to say (331 U. S. at 517):

> Rights of succession to property are determined by local law. See *Lyeth* v. *Hoey,* 305 U. S. 188, 193; *Irving Trust Co.* v. *Day,* 314 U. S. 556, 562. Those rights may be affected by an overriding federal policy, as where a treaty makes different or conflicting arrangements. *Hauenstein* v. *Lynham* [100 U. S. 483, 488–490]. Then the state policy must give way.

Accord: *Chirac* v. *Chirac,* 2 Wheat. 259; *Hauenstein* v. *Lynham,* 100 U. S. 483, 488–490; *Geofroy* v. *Riggs,* 133 U. S. 258, 266, 267; *Blythe* v. *Hinckley,* 180 U. S. 333; *Sullivan* v. *Kidd,* 254 U. S. 433; *Nielsen* v. *Johnson,* 279 U. S. 47; *Todok* v. *Union State Bank,* 281 U. S. 449, 453. Cf. *Takahashi* v. *Fish Commission,* 334 U. S. 410, 428, fn. 3 (Mr. Justice Reed dissenting).

There are other situations in which it may confidently be asserted that state regulation of the devolution of property may be struck down as inconsistent with the federal Constitution. Thus, in *Oyama* v. *California,* 332 U. S. 633, the Alien Land Law of California was held to deprive an American citizen, who was the son of a Japanese alien, ineligible to citizenship, "of the equal protection of California's laws and of his privileges as an American citizen" (332 U. S. at 640), in violation of the federal Constitution, because it imposed on him "an onerous burden of proof" (332 U. S. at 644) to establish that gifts of land to him by his father were in fact gifts. There is no reason to suppose that the result would have been different if the Court had had before it those provisions of the same California law which dealt with devises by or to ineligible aliens. In the course of the opinion, the Chief Justice quoted with approval Section 1 of the Civil Rights Act of 1866 (R. S. 1978, 8 U. S. C. 42). That statute, which, as the Court noted, was "enacted before

the Fourteenth Amendment but vindicated by it" (332 U. S. at 640), provides:

> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to *inherit*, purchase, lease, sell, hold, and convey real and personal property. [Italics supplied.]

And in *Shelley* v. *Kramer*, 334 U. S. 1, where enforcement by state courts of restrictive covenants based on race or color was held to be a violation of the equal protection clause of the Fourteenth Amendment, the Court, again quoting Section 1 of the Civil Rights Act of 1866, stated (p. 10):

> It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property. Equality in the enjoyment of property rights was regarded by the framers of that Amendment as an essential precondition to the realization of other basic civil rights and liberties which the Amendment was intended to guarantee.[8]

Although these cases involve *inter vivos* transactions, it should be noted that the Civil Rights Act, treated as having been incorporated into the

[8] See also *Buchanan* v. *Warley*, 245 U. S. 60; *Harmon* v. *Tyler*, 273 U. S. 668.

Fourteenth Amendment, imposes similar limitations on the state's power over testamentary transfers of property, and the rationale of these cases would be equally apposite were a state to undertake to base eligibility to bestow or to receive testamentary gifts on race or color.[4]

Even apart from these cases, there can be but little question that a state's power over testamentary dispositions is subject to constitutional limitations and protections, once it is recognized that it is "under our Constitution [that] the devolution of property is determined by the laws of the several states." *Snyder* v. *Bettman,* 190 U. S. 249, 252. For example, it has been said that a state "could not deny to residents in other States the right to take legacies which it granted to its own citizens, and therefore its power to prohibit all legacies cannot be invoked in aid of a principle that affects the foreign residents alone." Mr. Justice Holmes, dissenting on other grounds in *Maxwell* v. *Bugbee,* 250 U. S. 525, 544. And it is settled that a tax imposed on the descent of property—which traditionally has been based in part at least on the state's power to control descent—may involve such an arbitrary or unreasonable exercise of that power as to

[4] Even where the property involved is owned by the state itself as part of its public domain, its control over the use of that property is not absolute and is subject to constitutional limitations. *Takahashi* v. *Fish Comm'n.,* 334 U. S. 410; *Toomer* v. *Witsell,* 334 U. S. 385. See *infra,* fn. 17, pp. 34–35.

violate the equal protection clause of the Fourteenth Amendment. *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283; *Campbell* v. *California*, 200 U. S. 87, 94; *Keeney* v. *New York*, 222 U. S. 525, 535; *Maxwell* v. *Bugbee*, 250 U. S. 525, 535, 540; *Stebbins* v. *Riley*, 268 U. S. 137, 142.

It is interesting to observe that in *Clark* v. *Allen* (331 U. S. at 517), this Court cited *Irving Trust Co.* v. *Day*, 314 U. S. 556, one of the principal cases relied on below (B. R. 58, 59). It there expressly noted that the broad proposition for which it cited the *Irving Trust Co.* case was limited by the "overriding federal policy," in the presence of which "state policy must give way." And, we believe, a careful reading of the *Irving Trust Co.* case makes it clear that, despite the broad statement there contained, the Court in that case likewise recognized that there are constitutional limitations on a state's power over the descent of property. That case involved a recently enacted New York statute, applicable to wills executed thereafter, requiring that waiver of dower to be effective must comply with certain prescribed formalities. The widow's waiver there did not so comply, and the decedent, although he had executed his will prior to the law's enactment, had republished it thereafter. The constitutional question sought to be raised was whether the law impaired the obligation of contract or

constituted a deprivation of property. Although the statement quoted and relied upon below would, if this Court had given it the meaning attributed to it by the California Supreme Court, have been dispositive of the case, this Court did not stop there but went on to note that these formalities were "such as New York might, without restraint from the Federal Constitution, annex to the privilege of making a will under its law" (314 U. S. at 563), for, as the Court stated:

> Its effect was to continue as obligations of his estate social responsibilities which he had assumed during life, unless they had been waived with required formality. The State could have conditioned any further exercise of testamentary power upon giving a right of election to the surviving spouse regardless of any waiver, however formally executed; and having recognized the binding effect of a waiver, it could condition that recognition upon acknowledgment, which was no doubt considered a desirable safeguard against casual, informal, or ill-considered abandonment of statutory protection, as well as against overreaching or fraud [314 U. S. at 563–564].

The Court's decision was not, as the broad statement implied, that the states' power over the descent of property was free from constitutional restraints, but rather that the control there at-

tempted to be exercised did not violate any constitutional limitation.[8]

Thus, it is clear that a state's power over the devolution of property is subject to constitutional restraints, and that the Supreme Court of California, to the extent that it relied on broad statements in opinions of this Court, taken out of context, has ignored "the oft-repeated admonition of Chief Justice Marshall 'that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are

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[8] *United States* v. *Perkins*, 163 U. S. 625, also relied upon by the Supreme Court of California, is, as is shown *infra*, fn. 18, pp. 36–37, distinguishable and not opposed to the Government's position here. *United States* v. *Fox*, 94 U. S. 315, the only case in which this Court passed on the precise question here involved, is discussed in detail, *infra*, pp. 33–36. The additional cases cited by respondents to support the broad ground below are likewise not opposed to the Government's position. In most instances the broad statements were *obiter dicta* and not directed to the question as to the impact of the Constitution on the state's power over devolution. See, *e. g.*, *Jones* v. *Habersham*, 107 U. S. 174; *Arndt* v. *Griggs*, 134 U. S. 316; *Hutchison Investment Co.* v. *Caldwell*, 152 U. S. 65 (all cited in Gayetty Motion to Dismiss, pp. 5–6); *Lyeth* v. *Hoey*, 305 U. S. 188 (Burnison Motion to Dismiss, p. 6). Cases such as *United States* v. *United Mine Workers*, 330 U. S. 258, 275 (Gayetty Motion to Dismiss, p. 4) citing the *Fox* case on other matters are obviously irrelevant here. *Clark* v. *Allen*, 331 U. S. 503 (Burnison Motion to Dismiss, p. 7), as we have demonstrated in the text, expressly recognizes constitutional restraints on the states' control of devolution. Careful perusal of other cases such as *Maxwell* v. *Bugbee*, 250 U. S. 525 (Burnison Motion to Dismiss, p. 6) reveal that there the state's power over devolution was not regarded as wholly unrestrained. See *supra*, pp. 18, 19.

used,' and that if they go 'beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision,' [which] has special force in this instance. *Cohens* v. *Virginia*, 6 Wheat. 264, 399." *Wright* v. *United States*, 302 U. S. 583, 593–594.

II

SECTION 27 OF THE CALIFORNIA PROBATE CODE, DENYING TO THE UNITED STATES THE RIGHT TO RECEIVE TESTAMENTARY GIFTS, VIOLATES THE SUPREMACY CLAUSE OF THE CONSTITUTION

A. *The United States Has, as an Incident to Sovereignty, the Right to Receive Testamentary Gifts.*

There can be no question at this date—and the court below has so conceded (B. R. 59)—that the United States, as a body politic established by the Constitution, has the power to receive voluntary bequests and devices as an incident to that sovereignty. The United States has long received testamentary gifts from decedents domiciled in virtually all states; the sole exceptions are California in the present cases* and New York in regard to devises of realty (see *United States* v. *Fox*, 94 U. S. 315, discussed *infra*, pp. 33-36).

* Prior to the present cases, the United States had received, under the wills of California domiciliaries, bequests and devises naming the United States or one of its agencies as the intended donee. See B. R. 40-41.

Since the earliest days of the Republic, the Treasury Department, in the exercise of this inherent power, has accepted these gifts without question. "The property or money, when received by the United States, must doubtless be applied to public purposes authorized by the Constitution and laws. But the right to receive money or property, voluntarily contributed, is not a separate power, but a capacity belonging to the United States as a body politic and incident to the right of sovereignty * * *." *Dickson* v. *United States,* 125 Mass. 311, 313–315.

The power of the United States to receive testamentary gifts has as its source the same general right of sovereignty as other powers which the United States has been held to possess even in the absence of an express constitutional grant: to enter contracts (*United States* v. *Maurice,* 2 Brock. 96, 109; *United States* v. *Tingey,* 5 Pet. 115, 128), to sue in its own name (*Dugan* v. *United States,* 3 Wheat. 172, 181), to take security for debts owing to it (*United States* v. *Bradley,* 10 Pet. 343, 359; *United States* v. *Linn,* 15 Pet. 290, 311; *Neilson* v. *Lagow,* 12 How. 98, 107–108; *United States* v. *Hodson,* 10 Wall. 395, 406–408), and to requisition property (*Kohl* v. *United States,* 91 U. S. 367; *United States* v. *Jones,* 109 U. S. 513, 518–519; *United States* v. *Carmack,* 329 U. S. 230; *Stockton* v. *Baltimore & N. Y. R. Co.,* 32 Fed. 9, 19 (C. C. D. N. J.), appeal dismissed,

140 U. S. 699). Like other inherent attributes of federal sovereignty, it needed no express constitutional provision. Cf. *Boom Co.* v. *Patterson*, 98 U. S. 403, 406; *United States* v. *Jones, supra; United States* v. *Tingey, supra; United States* v. *Carmack*, 329 U. S. 230, 241–242.

Congress has never felt that a general statute authorizing the acceptance of testamentary gifts was necessary. Since the right to receive these gifts flows directly from the Constitution, it may be exercised without an enabling statute. Cf. *United States* v. *Tingey*, 5 Pet. 115, 128; *United States* v. *Bradley*, 10 Pet. 343, 359; *Neilson* v. *Lagow*, 12 How. 98, 107–108; *Jessup* v. *United States*, 106 U. S. 147. The long-prevailing practice has been to accept bequests of money and other personal property not subject to burdensome conditions and to report that fact to Congress. Ordinarily no formal congressional action has been considered required, and none has been taken.

Congress has clearly assumed that the United States has the right to receive these gifts by enacting various statutes dealing with their disposition. Two of these statutes are particularly pertinent in *Gayetty* (No. 188), inasmuch as they relate to the disposition of the kind of property there left to the United States, *i. e.*, United States' savings bonds and real property. The Act of April

3, 1945, c. 51, 59 Stat. 48, 31, U. S. C. 757e,[7] provides a procedure for dealing with these bonds when they are received by bequest. The Act of March 3, 1903, 32 Stat. 1112, 40 U. S. C. 304,[8] similarly assumes the right of the United States to receive devises of land by authorizing the sale of lands so received. Congress' assumption that the United States has inherent capacity to receive testamentary gifts is also implicit in its provision that bequests and devises to the United States are deductible from gross estate in computation of federal estate tax. 26 U. S. C. 812 (d). In addition, Congress has, by special legislation, dealt with the receipt and disposition of specific testamentary gifts willed to the United States for designated purposes. These enactments likewise assume the capacity of the United States to receive the gift; they simply designate particular officials (other than the Sec-

[7] "Whenever any direct obligation of the United States, bearing interest or sold on a discount basis, is donated to the United States, is bequeathed by will to the United States, become [So in original] the property of the United States under the terms of a trust, or is by its terms payable upon the death of the owner to the United States or any officer thereof in his official capacity, the Treasurer of the United States upon receipt of such obligation shall effect redemption thereof. * * *"

[8] "The Secretary of the Treasury is authorized to sell such lands as have been or may be acquired by the United States by devise, upon such terms and after such public notice by advertisement as he may deem best for the public interest."

retary of the Treasury) to receive the gift and regulate its disposition.[9]

Thus, not only has the United States an inherent constitutional right, long recognized and encouraged by Congress, to accept testamentary

[9] In the Act of July 1, 1836, c. 252, 5 Stat. 64, Congress authorized the appointment of agents to assert "for and in behalf of the United States * * * the right of the United States to the legacy bequeathed to them by * * * James Smithson." And in the Act of August 10, 1846, c. 178, 9 Stat. 102, Congress, stating in the Preamble that the United States had received the bequest, established the Smithsonian Institution for the carrying out of the provisions of the bequest. See, also, Joint Resolution of June 22, 1938, c. 595, 52 Stat. 943 (Attorney General authorized "to accept a deed conveying to the United States of America title to" the home of the late Justice Holmes); Act of July 15, 1935, c. 381, 49 Stat. 481 (Secretary of Navy "authorized to accept on behalf of the United States" specific devises and bequests for benefit of the hospital fund, United States Navy).

Congress has also authorized several agencies generally to receive testamentary gifts for specific purposes, apparently for the purpose of encouraging such gifts. Title XI of the Second War Powers Act, 1942, c. 199, 56 Stat. 176, 183 (authorizing acceptance of "any gift * * * made on condition that it be used for a particular war purpose"); Act of March 3, 1925, c. 423, 43 Stat. 1107, 2 U. S. C. 154 *et seq.* ("Library of Congress Trust Fund Board"); 5 U. S. C. 393 (Post Office Department Library); 5 U. S. C. 721 (Civil Service employees generally); 16 U. S. C. 715d (sanctuaries for migratory birds); 20 U. S. C. 55, 74 (b) (Smithsonian Institution and National Gallery of Art); 22 U. S. C. 809 (Foreign Service; 24 U. S. C. 181 (St. Elizabeths Hospital); 34 U. S. C. 1115, 1116, 1118 (Naval Academy and its Museum); 38 U. S. C. 14 (hospitalized disabled veterans); 42 U. S. C. 219 (Public Health Service); 44

gifts for general governmental purposes, but also wherever, because of the testator's desire that the gift be devoted to specific rather than general governmental purposes, there could be doubt as to the authority of the agent of the United States to comply with that condition, Congress has uniformly dissipated that doubt by enacting the necessary legislation.

B. *The Supremacy Clause Precludes the States from Abrogating the Government's Right to Receive Testamentary Gifts*

1. It is clear from the foregoing that the United States has the right to receive testamentary gifts and that that right flows from its sovereignty created by virtue of the Constitution. In addition, it should be noted that, in accordance with the statement in *Dickson* v. *United States*, 125 Mass. 311, 313–314, that "the property or money, when received by the United States, must doubtless be applied to public purposes authorized by the Constitution and laws," bequests to the United States without limitations as to use are deposited in "Miscellaneous Receipts", subject to appropriation by Congress for the general expenses of the Government. If, however, the

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U. S. C. 300cc (National Archives); cf. Act of June 25, 1910, c. 384, 36 Stat. 703, 736, as amended, 55 Stat. 868, 38 U. S. C. 17 *et seq.* (National Home for Disabled Volunteer Soldiers). Cf. *United States* v. *Stevens*, 302 U. S. 623; *National Home* v. *Wood*, 299 U. S. 211.

bequest is conditional or for a specific purpose, or if Congress desires that it be used otherwise than for general expenses, special legislation may be enacted.[10] See *supra*, fn. 9, p. 26. In either case, the money is used for "public purposes authorized by the Constitution and laws" for the benefit of the public generally.

The results which would flow from the decision below, cutting off this source of revenue to the Government[11] as well as prohibiting receipt by the Government of gifts such as those of James

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[10] A bequest to or for the use of a particular agency authorized by statute to receive testamentary gifts for specific purposes goes into a special fund "as * * * authorized by law."

[11] In recommending the passage of the proposed Title XII (Title XI as enacted) of the Second War Powers Act, 1942 (56 Stat. 176, 183), which authorizes the Secretary of the Treasury to accept gifts conditioned on their use for war purposes, the House Committee on the Judiciary commented (H. Rep. No. 1765, 77th Cong., 2d sess., p. 11):

> Since the Pearl Harbor attack over 15,000 persons have made donations of money and other property to the Government to be used in the war effort. These donations, which are presently at the rate of about $3,000,000 a year, came from individuals, schools, fraternal organizations, labor organizations, groups of citizens, and employees of various companies.
>
> This title will enable patriotic citizens who wish to bear more than their share of the war costs to make voluntary contributions to the war effort. * * *

See, also, S. Rep. No. 989, 77th Cong., 2d sess., p. 8. ("It is thought that acceptance of such gifts by the Government will make for a sense of participation in the war effort by the donors and to some extent lower the cost of prosecuting the war.")

Smithson and Justice Holmes, are, we submit, proscribed by the supremacy clause of the Constitution, to which the states' power over the descent of property is subordinate. The supremacy clause overrides state legislation which would impede the performance by the federal Government of any of its functions and so modifies "every power vested in subordinate governments, as to exempt its own operations from their own influence." *McCulloch* v. *Maryland*, 4 Wheat. 316, 427. This doctrine of federal supremacy, accepted in many decisions of this Court,[12] is coextensive with the scope of federal power, for every authorized activity of the United States is an exercise of its governmental power. *Graves* v. *N. Y. ex rel. O'Keefe*, 306 U. S. 466, 477; *Pittman* v. *Home Owners' Corp.*, 308 U. S. 21, 32; *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U. S. 95, 102. "Within the field of its powers, whatever the United States rightfully undertakes, it necessarily has warrant to consummate. And when judicial authority is invoked to aid in such consummation, state consti-

[12] See, *e. g.*, *Osborn* v. *United States Bank*, 9 Wheat. 738; *Thomson* v. *Pacific Railroad*, 9 Wall. 579, 590–591; *Tennessee* v. *Davis*, 100 U. S. 257, 263; *In re Neagle*, 135 U. S. 1; *Ohio* v. *Thomas*, 173 U. S. 276, 283; *Johnson* v. *Maryland*, 254 U. S. 51, 55–56; *Arizona* v. *California*, 283 U. S. 423; *Mayo* v. *United States*, 319 U. S. 441; see, also, *Penn Dairies, Inc.* v. *Milk Control Commission of Pennsylvania*, 318 U. S. 261.

tutions, state laws, and state policies are irrelevant to the inquiry and decision. It is inconceivable that any of them can be interposed as an obstacle to the effective operation of a federal constitutional power." *United States* v. *Belmont*, 301 U. S. 324, 331–332.

The supremacy clause has repeatedly been held to preclude the states from interposing obstacles to the Government's use of its other inherent sovereign powers. As to the Government's power of eminent domain, which, like the right to receive gifts by will, flows from the inherent sovereignty of the Government, Mr. Justice Strong said in *Kohl* v. *United States*, 91 U. S. 367, at 371, 374:

> If the right to acquire property for such uses may be made a barren right by the unwillingness of property-holders to sell, or by action of a State prohibiting a sale to the Federal government, the constitutional grants of power may be rendered nugatory, and the government is dependent for its practical existence upon the will of a State, or even upon that of a private citizen.
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> * * * * *
>
> *If the United States have the power, it must be complete in itself. It can neither be enlarged nor diminished by a State. Nor can the State prescribe the manner in which it must be exercised. The consent of a State can never be a condition*

precedent to its enjoyment. [Italics supplied.] [13]

And the Government's inherent power to pay its debts and disburse its funds is the basis of the holding in *Clearfield Trust Co.* v. *United States,* 318 U. S. 363, 366–367, that these matters are governed by federal rather than state law. "The authority to issue the check had its origin in the Constitution and the statutes of the United States and was in no way dependent on the laws of Pennsylvania or of any other state" (318 U. S. at 366). See, also, *United States* v. *Allegheny County,* 322 U. S. 174, 183, and cases cited. Cf. *United States* v. *Standard Oil Co.,* 332 U. S. 301, 306.

The supremacy clause also precludes the interposition of state obstacles to the securing of public revenues adequate to sustain the public burden, even where the fund involved is in a decedent's estate. Thus, the United States may enforce a lien for taxes upon real estate under the internal revenue laws without complying with state law requiring recordation and limiting the time enforcement (*United States* v. *Snyder,* 149 U. S. 210, 214; [14] *United States* v. *Allegheny County,*

[13] See, also, *United States* v. *Carmack,* 329 U. S. 230, 240.

[14] It was stated in the *Snyder* case (149 U. S. at 214):

"The power of taxation has always been regarded as a necessary and indispensable incident of sovereignty. A government that cannot, by self-administered methods, collect from its subjects the means necessary to support and maintain

322 U. S. 174, 183); this lien is effective as to property in a decedent's estate (*Detroit Bank* v. *United States,* 317 U. S. 329), and is entitled to priority over state liens, allegedly made superior by state law (*Michigan* v. *United States,* 317 U. S. 338). Likewise, debts due to the Government are entitled to priority in payment by virtue of R. S. 3466 (31 U. S. C. 191), whether the debt be due from a decedent's estate (*United States* v. *Remund,* 330 U. S. 539) or is opposed by a state's claim for taxes (*Massachusetts* v. *United States,* 333 U. S. 611; *Illinois* v. *United States,* 328 U. S. 8). Finally, a claim of the Government against a decedent's estate will not be barred by failure to file within the time required by state law, and if the state statute undertakes to invalidate the claim of the United States so that it cannot be enforced at all, it transgresses the limits of state power. *United States* v. *Summerlin,* 310 U. S. 414; cf. *Dupont de Nemours & Co.* v. *Davis,* 264 U. S. 456; *Ches. & Del. Canal Co.* v. *United States,* 250 U. S. 123, 126.

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itself in the execution of its functions is a government merely in name. If the United States, proceeding in one of their own courts, in the collection of a tax admitted to be legitimate, can be thwarted by the plea of a state statute prescribing that such a tax must be assessed and recorded under state regulation, and limiting the time within which such tax shall be a lien, it would follow that the potential existence of the government of the United States is at the mercy of state legislation."

In brief, a strange constitutional anomaly would exist if the states, which cannot interfere with the Federal Government's claims against the estates of decedents, could prohibit its receipt of gifts voluntarily left it by the same decedents to be used for similar public purposes.[15] Accordingly, we submit that the Federal Government's inherent right to receive testamentary gifts is protected by the supremacy clause and is not dependent upon the grace of its subordinate states.

2. The California Supreme Court relied in large part upon *United States* v. *Fox*, 94 U. S. 315. While that case undoubtedly supports the holding of the court below, at least insofar as real property is concerned, we submit that it is demonstrably erroneous and should be overruled.

The Court there upheld the validity of a statute of New York which the courts of that state had construed in such manner as to nullify a devise of realty to the Federal Government.[16] The Court

[15] Although Congress has never enacted a general statute providing for the acceptance by the United States of testamentary gifts, the several statutes enacted at various times (see *supra*, fn. 9, p. 26) manifest a congressional policy to receive them to the fullest extent possible.

[16] It should be noted that the New York statute there concerned affected only devises of realty to the United States and that this Court accordingly spoke only of the state's exclusive control over the disposition of real estate within its borders. 94 U. S. at 320–321. The reasons upon which the United States predicates its assertion that the California statute is invalid are, however, as applicable to real property as to personal.

predicated its opinion upon the broad ground (94 U. S. at 320–321) "that the disposition of immovable property, whether by deed, descent, or any other mode, is exclusively subject to the government within whose jurisdiction the property is situated. * * * The title and modes of disposition of real property within the State, whether *inter vivos* or testamentary, are not matters placed under the control of Federal authority." But we have seen that more recent decisions of this Court have destroyed this broad and basic assumption; there can no longer be doubt that the state's control over the transfer of property, whether *inter vivos* or testamentary, *is* subject to the limitations of the Federal Constitution. *Clark* v. *Allen*, 331 U. S. 503; *Oyama* v. *California*, 332 U. S. 633; *Shelley* v. *Kraemer*, 334 U. S. 1. See *supra*, pp. 15–22."

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[17] The evolution of constitutional restraints in this area has been roughly paralleled by the development of similar restraints over the states' power over their public domain. In *McCready* v. *Virginia*, 94 U. S. 391, rendered contemporaneously with *Fox*, this Court sustained the right of the State of Virginia to exclude citizens of other states from planting oysters in an inland stream when its own citizens had that privilege, on the ground that the citizens of Virginia "alone owned the property to be sold or used, and they alone had the power to dispose of it as they saw fit" (94 U. S. at 396). In *Toomer* v. *Witsell*, 334 U. S. 385, however, the Court substantially limited the scope of *McCready*. There the Court held that a South Carolina statute imposing a $2,500 license fee on nonresidents for the privilege of shrimping in the three-mile maritime belt off the coast of

The *Fax* decision was, moreover, of questionable soundness even at the time it was rendered. In the first place, the Court seems to have considered the problem there raised to be whether the devolution of property within a state was governed by state or federal law. But the primary power of the states to determine who shall take testamentary gifts was not and is not disputed. The United States assumed that such power lay in the states, and merely urged, as it does here, that the United States may, as an incident to its sovereignty, take testamentary gifts even though state law purports to prohibit such devises. In the second place, the Court regarded as applicable the English Statute of Wills (Statute of 32 Hen. VIII, c. 1) which, it noted, had been carried over into New York law. But, in so doing, the Court disregarded the further principle of English common law that bequests for the benefit of the country are valid (see, *e. g., Newland* v. *Attorney-General,* 3 Meriv. 684, 36 Eng.

South Carolina while requiring resident to pay only a $25 license fee, violated the Fourteenth Amendment's privileges and immunities clause. The Court rejected the "ownership" theory on which the *McCready* case is based and distinguished that case as relating to fish in inland waters which would have remained in Virginia until removed by man, whereas the *Toomer* case concerned migratory fish in the maritime belt (334 U. S. at 400–402). See, also, *Takahashi* v. *Fish Comm'n.*, 334 U. S. 410, 420–421, in which the Court was unable to find a California "special public interest" sufficient to justify a state ban on commercial fishing by an alien ineligible to citizenship.

Rep. 262; *Nightingale* v. *Goulburn*, 5 Hare 484, 67 Eng. Rep. 1003, affirmed, 2 Phillips 594, 41 Eng. Rep. 1072; *Ashton* v. *Langdale*, 15 Jur. 868, 64 Eng. Rep. 888), and did not attempt to reconcile these principles in the light of our dual system of state and federal sovereignties with the Federal Government supreme by virtue of the supremacy clause. Cf. *Snyder* v. *Bettman*, 190 U. S. 249, 252.

In these circumstances, we submit that the Court should now overrule the *Fox* case, just as it has already overruled *Doyle* v. *Continental Insurance Co.*, 94 U. S. 535, rendered contemporaneously with *Fox*. In the *Doyle* case, this Court had affirmed a state's power to require a foreign corporation to waive its right to resort to federal courts as a condition of admission to do business in the state. It subsequently overruled that decision "because the sovereign power of a State in excluding foreign corporations, as in the exercise of all others of its sovereign powers, is subject to the limitations of the supreme fundamental law." *Terral* v. *Burke Construction Co.*, 257 U. S. 529, 532–533.[18]

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[18] *United States* v. *Perkins*, 163 U. S. 625, also relied upon by the California Supreme Court, is distinguishable. In that case, this Court (citing the *Fox* case) sustained the power of the states to tax a bequest to the United States on the stated ground that the states, in the exercise of their power over the descent of property, may attach any condition to their sanctioning of such devolution. See, also, *Plummer* v. *Coler*, 178 U. S. 115. Other decisions, however, have explained these

III

SECTION 27 DISCRIMINATES AGAINST THE UNITED STATES, IN VIOLATION OF THE SUPREMACY CLAUSE

As construed by the California Supreme Court, Section 27 forbids the United States, but permits the State of California and its inferior governmental units, to take testamentary gifts under the wills of Californian domiciliaries. The California Court's holding that this statute, as thus construed, did not unconstitutionally discriminate against the United States was similarly predicated on the ground that the states have exclusive power to control the devolution of property, free from constitutional limitations. "The Government's contention," the Court stated, "that if section 27 of the Probate Code should be construed as invalidating the bequest in question, 'serious constitutional questions would arise' involving an 'un-

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cases as resting on the independent power of the states to tax the transfer of property. *Knowlton* v. *Moore*, 178 U. S. 41, 57–58; *Snyder* v. *Bettman*, 190 U. S. 249, 252. In these latter cases, this Court rejected the contention that the authority to lay a succession tax arose solely from the power to regulate the descent of property. It held, despite the intergovernmental immunity doctrine, then in full bloom, that the United States, along with the states, has power to tax transfers of property and accordingly sustained a tax levied by the United States on a bequest to a state. See, also, *Greiner* v. *Llewellyn*, 258 U. S. 384 (sustaining a federal tax on a bequest of municipal bonds). As thus explained by this Court, the *Perkins* case clearly provides no support, independently of the *Fox* case, for the holding of the California Supreme Court.

lawful discrimination against the United States' is effectively answered by the *Irving Trust Co.* case as above quoted" (B. R. 58). We have, however, shown, *supra,* pp. 14–22, that this broad basis of the decision below is erroneous, and that the power of the State of California over the devolution of property is subject to constitutional limitations, including the supremacy clause of Article VI.

Moreover, we have also shown (pp. 22–27)—and the court below has conceded (B. R. 59)—that the United States, as created by the Constitution, has the right, as an incident to its sovereignty, to receive gifts by will.

It is plain that state legislation, even in fields which are ordinarily reserved to the states, cannot constitutionally work a discrimination against rights arising under federal law. Thus, in *Pufahl* v. *Estate of Parks,* 299 U. S. 217 a receiver of a national bank had brought suit in a state court to recover from a deceased stockholder's estate the amount of the stockholder's liability under a federal statute. In holding that the law of the forum controlled with respect to matters such as the marshaling of assets, and priority of distribution, this Court commented (299 U. S. at 227):

> This is not to say that a state may deny all remedy for the substantive right arising out of the federal statute * * *; it is

merely to say that if the state does not discriminate against the receiver's claim in favor of others of equal dignity and like character, there is no warrant for exempting the claim from the effect of local statutes governing procedure or limiting the time for prosecution of action.

The petitioner, having elected to prove his claim in the appropriate state court, is bound by the laws of Illinois as to the enforcement of such claims, provided those laws are nondiscriminatory and operate equally upon all claims of the class in which his belongs.

The ground of the decision was not that the state's power to control the estates of decedents was unlimited, but that its laws did not in fact place the federal claim in a more unfavorable situation than other claims "of equal dignity and like character." In the instant case, on the other hand, there can be no doubt that the right of the United States to take by testamentary devise is discriminated against in favor of the right of the State of California; and there can be no doubt, either, that the right of the United States is of the same nature and of dignity equal to, if not greater than, the right of the State of California.

Similarly, in *McKnett* v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230, this Court held an Alabama statute, which discriminated against a right cre-

ated by a federal statute, to be violative of the supremacy clause. The statute there involved, as construed by the Supreme Court of Alabama, denied jurisdiction to its courts to entertain actions arising under the Federal Employers' Liability Act, while permitting similar actions arising under the laws of Alabama or any other state. In striking down that statute this Court stated (at 233–234):

> While Congress has not attempted to compel states to provide courts for the enforcement of the Federal Employers' Liability Act, *Douglas* v. *New York, N. H. & H. R. Co.*, 279 U. S. 377, 387, the Federal Constitution prohibits state courts of general jurisdiction from refusing to do so solely because the suit is brought under a federal law. The denial of jurisdiction by the Alabama court is based solely upon the source of law sought to be enforced. The plaintiff is cast out because he is suing to enforce a federal act. A state may not discriminate against rights arising under federal laws.

See also *Testa* v. *Katt*, 330 U. S. 386; *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698; *Minneapolis & St. L. R. Co.* v. *Bombolis*, 241 U. S. 211, 222; *Second Employers' Liability Cases*, 223 U. S. 1, 57–58; *Campbell* v. *City of Haverhill*, 155 U. S. 610, 615; *Metcalf* v. *Watertown*, 153 U. S. 671.

And in *Republic Pictures Corp.* v. *Kappler,* 151 F. 2d 543, the Court of Appeals for the Eighth Circuit held that an Iowa statute limiting the time for instituting action on claims or causes of action created or growing out of federal statutes to six months, while permitting substantially longer periods for non-federal causes of action, discriminated against rights accruing under federal laws, contrary to Article VI of the Constitution. On appeal, this Court affirmed *per curiam.* 327 U. S. 757. See, also, *Rockton & Rion Ry.* v. *Davis,* 159 F. 2d 291, 293 (C. A. 4); *Caldwell* v. *Alabama Dry Dock & Shipbuilding Co.,* 161 F. 2d 83, 85–86 (C. A. 5), ceriorari denied, 332 U. S. 759; *Kampe* v. *Michael Yundt Co.,* 69 F. Supp. 753 (E. D. Wis.); *Fullerton* v. *Lamm,* 177 Or. 655.

What is true of a right conferred upon a private person by a federal statute is *a fortiori* true of a right which, under the Constitution, inheres in the United States as an essential part of its sovereignty. Any discrimination against so basic a federal right is prohibited by the supremacy clause.[19]

[19] The fact that Section 27 also declares states other than California ineligible to receive testamentary gifts is here immaterial, for the supremacy clause is not applicable in matters concerning the relationship of states *inter se.* Cf. *Testa* v. *Katt,* 330 U. S. 386, 393–394.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgments below should be reversed.

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